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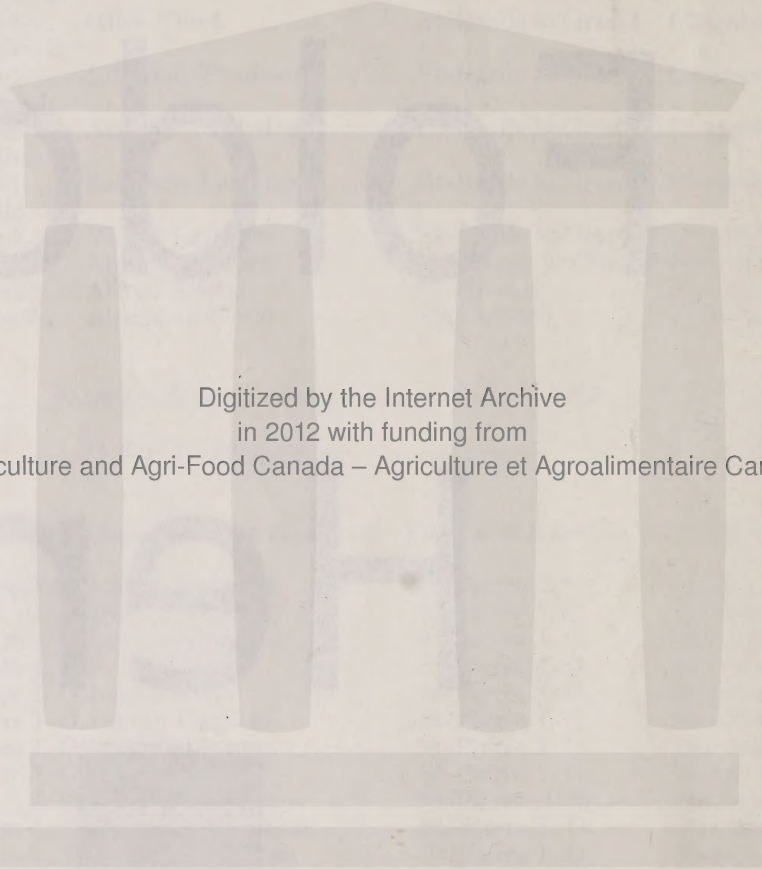
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DEPARTMENT OF AGRICULTURE
DAIRY AND COLD STORAGE COMMISSIONER'S BRANCH
FRUIT DIVISION
OTTAWA, CANADA.

The Inspection and Sale Act

PART IX

As Amended in 1907-08 and 1912-13

(THE FRUIT MARKS ACT AND FRUIT PACKAGES)

AND

GENERAL NOTES

BULLETIN No. 40

Dairy and Cold Storage Commissioner's Series
(SUPERSEDES No. 11)

LETTER OF TRANSMITTAL.

OTTAWA, June 26, 1913.

To the Honourable
The Minister of Agriculture.

SIR,—I have the honour to submit the manuscript for a new bulletin containing Part IX of the Inspection and Sale Act, Chapter 85, R.S. as amended in 1907-08 and again in 1912-13, together with the Regulations now in force and some explanatory notes.

The amended sections of the Act are reproduced herein in full, together with the new sections (320A and 333C). The amending Act of 1912-13 is included as an addendum.

This bulletin is a revision of No. 11 which it is intended to supersede.

I have the honour to recommend that it be printed for general distribution as Bulletin No. 40 of the Dairy and Cold Storage Series.

I have the honour to be, Sir,
Your obedient servant,

J. A. RUDDICK,
Dairy and Cold Storage Commissioner

THE INSPECTION AND SALE ACT.

PART IX AS AMENDED IN 1907-08 AND 1912-13.

(THE FRUIT MARKS ACT AND FRUIT PACKAGES.)

1. This Act may be cited as the Inspection and Sale Act, R.S., c. 99, s. 1.¹

INTERPRETATION.

319. In this Part, unless the context otherwise requires,—

(a) 'closed package'² means a box or barrel of which the contents cannot be seen or inspected when such package is closed;

(b) 'fruit' shall not include wild fruit, nor cranberries, whether wild or cultivated.

(c) 'culls' shall include fruit that is either very small for the variety or immature, or the skin of which is broken so as to expose the tissue beneath, or that is so injured by insects, fungi, abnormal growths, or other causes, as to render it unmerchantable. 1 E. VII, c. 27, s. 3; 7-8 E. VII, c. 35, s. 7.

THE MARKING OF FRUIT.

320. Every person who, by himself or through the agency of another person, packs fruit in a closed package,² intended for sale, shall cause the package to be marked in a plain and indelible³ manner in letters not less than half an inch in length, before it is taken from the premises where it is packed,—

(a) With the words 'packed by' and with the initials of his christian names, and his full surname and address, or, in the case of a firm or corporation,⁴ with the firm or corporate name and address;⁵

(b) with the name of the variety or varieties;⁶ and,

(c) with a designation of the grade of fruit, which shall include one of the following four marks, viz.: *Fancy, No. 1, No. 2, No. 3.*

2. Such mark may be accompanied by any other designation of grade or brand, if that designation or brand is not inconsistent with, or marked more conspicuously than, the one of the said four marks which is used on the said package. 6 E. VII, c. 15, s. 1.

¹In the Revised Statutes of Canada, 1906, 'The Fruit Marks Act,' together with other Acts referring to fruit and fruit packages, is codified in 'The Inspection and Sale Act,' Part IX.

²Baskets and berry crates (even with closed covers) will not be considered closed packages to be affected by sections 320 and 321 (b); the packing of fruit in any package is subject to the provisions of section 321 (c).

³It has been demonstrated that the mark made by an ordinary lead pencil is not indelible. A stencil is the best means of complying with the law. A rubber stamp will make a plain and indelible mark if carefully used.

⁴Unregistered partnerships are not included in these terms.

⁵In case no name appears on packages, proceedings may be taken against the owner where ascertained; otherwise against the party in whose possession the fruit is found.

⁶When the name of the variety is unknown or doubtful, the word 'unknown' may be substituted for a variety name.

320A. The Governor in Council, by regulation, may,—

(a) prescribe the kinds of imported fruit the packages containing which must be branded or marked;

(b) prescribe the brands or marks to be used thereon;

(c) prescribe the manner and places in and at which such fruit is to be inspected and such packages branded or marked.

2. All regulations made under the provisions of this section shall be published in the *Canada Gazette*.

3. All packages of fruit not branded or marked in accordance with such regulations shall be forfeited to His Majesty, and may be destroyed or otherwise disposed of as the Minister may direct.

4. Any person violating any regulation made under the provisions of this section shall be liable, on summary conviction, to a fine of not more than fifty dollars and costs, or, in default of payment, to imprisonment for a term not exceeding one month.

321. No person shall sell, or offer, expose or have in his possession, for sale, any fruit packed,—

(a) in a closed package and intended for sale unless such package is marked as required by the provisions of this Part;

(b) in a closed package, upon which package is marked any designation⁷ which represents such fruit as of,—

(i) Fancy quality, unless such fruit consists of well grown specimens of one variety, sound, of uniform⁸ and of at least normal size and of good colour for the variety, of normal shape, free from worm holes, bruises, scab and other defects, and properly packed;⁹

(ii) No. 1 quality, unless such fruit includes no culls¹⁰ and consists of well grown specimens of one variety, sound, of not less than medium size and of good colour for the variety, of normal shape and not less than ninety per cent free from scab, worm holes, bruises and other defects, and properly packed;⁹

(iii) No. 2 quality, unless such fruit includes no culls¹⁰ and consists of specimens of not less than nearly medium size for the variety, and not less than eighty per cent free from worm holes and such other defects as cause material waste,¹¹ and properly packed;⁹

(c) in any package in which the faced or shown surface gives a false representation of the contents of such package; and it shall be considered a false representation when more than fifteen per cent of such fruit is substantially smaller in size than, or inferior in grade to, or different in variety from, the faced or shown surface of such packing. 1 E. VII, c. 27, ss. 5 and 7; 6 E. VII, c. 15, s. 2; 7-8 E. VII, c. 35, s. 8.

BRANDING FALSELY MARKED AND FALSELY PACKED.

322. Whenever any fruit in any package is found to be so packed that the faced or shown surface gives a false representation of the contents of the package, any inspector charged with the enforcement of this Part may mark the words *Falsely packed* in a plain and indelible manner on the package.

⁷It will be noted that the definitions of grades, Fancy, No. 1, and No. 2, do not vary from year to year, nor do they vary in different provinces of the Dominion. If the quality of the fruit generally is poor, the only result is that a smaller proportion of the fruit is of the higher grades.

⁸'Uniform' is to be taken as referring to the specimens in each individual package. Normal sized apples and very large apples, packed in the same package, would not be uniform.

⁹'Slacks' and over-pressed packages are to be considered as not properly packed if the condition is likely to result in permanent damage during handling or transit.

¹⁰Note definition of 'culls' in section 319.

¹¹'Defects as cause material waste' will include abnormal growths, bruises, immaturity and the effects of fungous diseases.

2. Whenever any fruit packed in a closed package is found to be falsely marked, the said inspector may efface such false marks, and mark the words *Falsely marked* in a plain and indelible manner on the package.

3. The inspector shall give notice, by letter or telegram, to the packer whose name is marked on the package, within twenty-four hours after he marks the words *Falsely packed* or *Falsely marked* on the package. 2 E. VII, c. 10, s. 3; 6 E. VII, c. 15, s. 3.

(Sections 323 and 324 were repealed in 1907-08.)

FRUIT PACKAGES.

325. All apples packed in Canada for export for sale by the barrel in closed barrels shall be packed in good and strong barrels of seasoned wood having dimensions not less than the following, namely: twenty-six inches and one-fourth between the heads, inside measure, and a head diameter of seventeen inches, and a middle diameter of eighteen inches and one-half, representing as nearly as possible ninety-six quarts.

2. When apples, pears or quinces are sold by the barrel, as a measure of capacity, such barrel shall not be of lesser dimensions than those specified in this section.

3. When apples are packed in Canada for export for sale by the box, they shall be packed in good and strong boxes of seasoned wood, the inside dimensions of which shall not be less than ten inches in depth, eleven inches in width and twenty inches in length, representing as nearly as possible two thousand two hundred cubic inches.

4. When apples are packed in boxes or barrels having trays or fillers wherein it is intended to have a separate compartment for each apple, the provisions of this section as to boxes and barrels shall not apply. 1 E. VII, c. 26, s. 4, 4-5 E. VII, c. 44, ss. 1 and 2.

BERRIES, &C.

326. Every box of berries or currants offered for sale, and every berry box manufactured and offered for sale, in Canada, shall be plainly marked on the side of the box, in black letters at least half an inch square, with the word 'Short,' unless it contains when level-full as nearly exactly as practicable,—

(a) at least four-fifths of a quart;¹² or,

(b) two-fifths of a quart.

2. Every basket of fruit offered for sale in Canada, unless stamped on the side plainly in black letters, at least three-quarters of an inch deep and wide, with the word 'Quart' in full, preceded with the minimum number of quarts, omitting fractions, which the basket will hold when level-full, shall contain, when level-full, one or other of the following quantities:—

(a) Fifteen quarts or more.

(b) Eleven quarts, and be five and three-fourths inches deep perpendicularly, eighteen and three-fourth inches in length and eight inches in width at the top of the basket, sixteen and three-fourths inches in length and six and seven-eighths inches in width at the bottom of the basket, as nearly exactly as practicable, all measurements to be inside of the veneer proper and not to include the top band.

(c) Six quarts, and be four and one-half inches deep perpendicularly, fifteen and three-eighths inches in length and seven inches in width at the top of the basket, thirteen and one-half inches in length and five and seven-eighths inches in width at the bottom of the basket, as nearly exactly as practicable, all measure-

¹²This will reduce to 55½ cubic inches.

ments to be inside of the veneer proper and not to include the top band: Provided that the Governor in Council may, by proclamation, exempt any province from the operation of this section.

(d) Two and two-fifths quarts, as nearly exactly as practicable. 1 E. VII, c. 26, s. 5; 6-7 E. VII, c. 21, s. 1.

INSPECTOR'S RIGHT TO EXAMINE.

327. Any person charged with the enforcement of this Part may enter upon any premises to make examination of any packages of fruit suspected of being falsely marked or packed in violation of any of the provisions of this Part, whether such packages are on the premises of the owner, or on other premises, or in the possession of a railway or steamship company. 1 E. VII, c. 27, s. 12; 2 E. VII, c. 10, s. 5.

OFFENCES AND PENALTIES.

328. Every person who, by himself or through the agency of any other person, violates any of the provisions of sections 320 and 321 of this Act, shall be liable, for the first offence, to a fine not exceeding twenty-five dollars and not less than ten dollars; for the second offence, to a fine not exceeding fifty dollars and not less than twenty-five dollars; and for the third and each subsequent offence, to a fine not exceeding two hundred dollars and not less than fifty dollars, together, in all cases, with the costs of prosecution; and in default of payment of such fine and costs shall be liable to imprisonment, with or without hard labour, for a term not exceeding one month, unless such fine and costs, and the costs of enforcing them, are sooner paid.

2. Whenever any such violation is with respect to a lot or shipment consisting of fifty or more closed packages, there may be imposed, in addition to any penalty provided by this section, for the first offence twenty-five cents, for the second offence fifty cents, and for the third and each subsequent offence one dollar, for each closed package in excess of fifty with respect to which such violation is committed. 7-8 E. VII, c. 35, s. 9.

329. Every person who, not being an inspector, wilfully alters, effaces, or obliterates, wholly or partially, or causes to be altered, effaced, or obliterated, any marks on any package which has undergone inspection, shall incur a penalty of one hundred dollars for the first offence, and two hundred dollars for the second and each subsequent offence, together, in all cases, with the costs of prosecution; and in default of payment of such fine and costs shall be liable to imprisonment, with or without hard labour, for a term not exceeding one month, unless such fine and costs, and the costs of enforcing them, are sooner paid. 1 E. VII, c. 27, s. 10; 2 E. VII, c. 10, s. 4; 7-8 E. VII, c. 35, s. 10.

330. Every person who violates any of the provisions of sections 325 and 326 of this Act shall be liable, on summary conviction, to a penalty of twenty-five cents for each barrel of apples, or box of apples, pears, quinces, berries, or currants, or basket of fruit, or berry box, respecting which such violation is committed, together with the costs of prosecution; and in default of payment of such fine and costs shall be liable to imprisonment, with or without hard labour, for a term not exceeding one month, unless such fine and costs, and the costs of enforcing them, are sooner paid. 7-8 E. VII, c. 35, s. 11.

(Section 331 was repealed in 1907-08).

332. Every person who obstructs any person charged with the enforcement of this Part in entering any premises to make examination of packages of fruit as provided by this Part, or who refuses to permit the making of any such examination, shall be liable to a penalty not exceeding five hundred dollars and not less than twenty five dollars, together with the costs of prosecution, and in

default of payment of such penalty and costs, shall be liable to imprisonment, with or without hard labour, for a term not exceeding six months, unless such penalty and costs, and the costs of enforcing the same, are sooner paid. 1 E. VII, c. 27, s. 12.

333. The person on whose behalf any fruit is packed, sold, offered or had in possession for sale, contrary to the provisions of the foregoing sections of this Part, shall be liable for the violation of this Part. 1 E. VII, c. 27, s. 11.

333A. The Minister of Agriculture may make appointments of inspectors and other persons for the enforcements of this Part.

333B. The Governor-in-Council may make any such regulations as he considers necessary in order to secure the efficient enforcement and operation of this Part, and may by such regulations provide for the imposition of penalties not exceeding thirty dollars on any person offending against them; and the regulations so made shall be in force from the date of their publication in *The Canada Gazette*, or from such other date as is specified in the proclamation in that behalf; and the violation of any such regulation shall be deemed an offence against this Part, and punishable as such. 7-8 E. VII, c. 35, s. 12.

333c. The person whose name is marked on any closed package of fruit as the packer thereof shall be deemed to be the packer thereof.

PROCEDURE.

334. For the purpose of jurisdiction under Part XV of the Criminal Code, in any complaint, information or conviction for a violation of any of the provisions of this Part, the matter complained of may be alleged and shall be held to have arisen at the place where the fruit was packed, sold, offered, exposed or had in possession for sale, or at the residence or usual place of residence of the accused. 1 E. VII, c. 27, s. 13.

335. No appeal shall lie from a conviction under this Part except to a superior, county, circuit or district court, or the court of the sessions of the peace, having jurisdiction where the conviction was had; and such appeal shall be brought, notice of appeal in writing given, recognizance entered into or deposit made, within ten days after the date of conviction.

2. The trial of any such appeal shall be heard, had, adjudicated upon and decided, without the intervention of a jury, at such time and place as the court or judge hearing the trial appoints, and within thirty days from the date of conviction, unless the said court or judge extends the time for hearing and decision beyond such thirty days.

3. In all respects not provided for in this Part, the procedure under Part XV of the Criminal Code shall, so far applicable, apply to all prosecutions brought under this Part. 1 E. VII, c. 27, s. 14.

APPLICATION OF FINES.

336. Any pecuniary penalty imposed under this Part shall, when recovered be payable one-half to the informant¹³ or complainant and the other half to His Majesty. 1 E. VII, c. 27, s. 15.

¹³When a conviction is made upon an information laid by a Dominion fruit inspector, the inspector receives no part of the fine. The whole fine is payable to the Receiver General.

ORDER IN COUNCIL OF SEPTEMBER 14, 1901.

PRIVY COUNCIL, CANADA.

AT THE GOVERNMENT HOUSE AT OTTAWA,
The 14th day of September, 1901.

PRESENT:

His Excellency the Governor General in Council.

Whereas by section 16 of the Act, 1 Edward VII, chapter 27, intituled, 'An Act to provide for the marking and inspection of packages containing fruit for sale,' it is provided as follows:—

'16. The Governor in Council may make such regulations as he considers necessary in order to secure the efficient enforcement and operation of this Act; and may by such regulations impose penalties not exceeding fifty dollars on any person offending against them; and the regulations so made shall be in force from the date of their publication in the *Canada Gazette*, or from such other date as is specified in the proclamation in that behalf; and the violation of any such regulation shall be deemed an offence against this Act, and punishable as such.'

Therefore His Excellency the Governor General in Council is pleased, in virtue of the above cited provisions of the said Act, to make the following regulations, the same to come into force on the date of their publication in the *Canada Gazette*.

1. The Minister of Agriculture may make appointments of inspectors and other persons for the enforcement of the Act.

2. Any inspector charged with the enforcement of the Act may detain, for the time necessary to complete his inspection, any shipment of fruit in respect of which he has reasonable grounds for believing that the marking of the package, or the packing of the fruit, constitutes a violation of the Act; such fruit shall at all times be at the risk and charges of the owner thereof; and any inspector detaining fruit shall give the owner where ascertained, notice that such fruit is being detained, in storage or otherwise, as the case may be.

3. The despatch of a prepared telegram or letter to the packer whose name is marked on the package shall be considered due notice.

4. No person shall for himself or on behalf of any other person, pack any fruit for sale, contrary to the provisions of the Act.

5. Any inspector or other person who violates any of the regulations made under the authority of the Act shall for each offence, on summary conviction, be liable to a fine of not less than five dollars and not exceeding fifty dollars, together with the costs of prosecution.

(Signed)

JOHN J. MCGEE,
Clerk of the Privy Council.

ORDER IN COUNCIL OF JUNE 25, 1913.

In virtue of the provisions of the amendment to section 320 of the Inspection and Sale Act, the following regulations have been passed and the same were published in the *Canada Gazette* on the 28th day of June, 1913.

REGULATIONS.

1. In these Regulations :

- (a) 'importer' means the person, firm or corporation in Canada to whom fruit from outside of Canada is sold, shipped, consigned or delivered.
- (b) 'fruit' means apples, crab apples, pears, plums and peaches when shipped in closed packages.
- (c) 'inspector' means an inspector employed by the Department of Agriculture of Canada to enforce the provisions of Part IX of the Inspection and Sale Act, Chap. 85, Revised Statutes of Canada, 1906, and the regulations made thereunder.

2. No fruit shall be imported into Canada except as hereinafter provided.

3. Every importer of fruit, or his representative, shall cause all grade marks as found on closed packages containing imported fruit to be completely removed, erased or obliterated, when such grade marks are different to, or inconsistent with the marking or branding required by Sections 320 and 321 of the Inspection and Sale Act, or Section 4 of these regulations.

4. Every importer, or his representative, of fruit shall cause all closed packages containing such imported fruit to be marked or branded in a plain and legible manner, in letters and figures not less than half an inch long, and in the following form :

{Place here the
proper grade marks. }

{Place here the correct
name of the variety }

Imported by

(Insert here the name and address of the Importer.)

5. The removal, erasure or obliteration of original grade marks or brands on closed packages containing imported fruit and the re-marking or branding of the said closed packages to conform with the provisions of The Inspection and Sale Act as required by these regulations, shall be done at the time when the said packages are being taken from the railway car or steamship or other conveyance in which they have been brought into Canada.

6. The marks or brands specified in section 4 of these regulations shall be placed on the end of the packages.

GENERAL NOTES.

(A) FOR INSPECTORS.

Inspectors will not examine particular lots of fruit at the request of buyers or sellers. When not under specific directions, inspectors will use their discretion as to where they can best employ their time within the district assigned them.

Inspectors will avoid anything which would delay unnecessarily the move-

ment of fruit or which would interfere with the interests of those concerned in the fruit trade, except in so far as action may be necessary to prevent violation of the Act.

Packages which have been inspected are to be closed by the inspector and left in marketable order after examination, unless the owner prefers to take charge of such opened packages.

(B) FOR THE GROWER.

If the grower sells his fruit unpacked, the Act does not apply to him in any particular.

If he sells his fruit in uncovered barrels or boxes, the Act requires only that the top of each package shall be no better than the fruit throughout the package.

If the grower packs his own fruit he accepts the responsibility of the packing as described in the following paragraph :

(C) FOR THE PACKER.

Section 320 of the Act requires that the person who owns the fruit when it is packed in closed barrels or boxes must mark plainly on each package :—

1. His name and post office address preceded by the words 'Packed by'.

2. The name of the variety of the fruit.

3. The grade of the fruit, whether it is 'Fancy,' 'No. 1,' 'No. 2,' or 'No. 3.'

If he marks the package 'Fancy,' the fruit must be practically perfect, as described in section 321 (b) (i).

On reading subsection (b) (ii) carefully, it will be seen that the packer should aim in packing grade No. 1 to discard every injured or defective fruit, and not to deliberately include ten per cent of inferior specimens. This margin is meant to make the work of grading easier and more rapid than if absolute perfection were exacted. Ten per cent is presumed to be the margin within which an honest packer can do rapid work, using every endeavour to make each specimen conform to the general standard for the grade.

Even the twenty per cent margin in grade No. 2 must be composed of specimens not less than nearly medium size, including no culls.

The Act makes no restriction as to the quality of fruit which is marked 'No. 3.'

The Packer is responsible if the face of each package does not represent the contents as required by section 321, subsection (c). Over-facing is an offence against the Act, which is most severely dealt with by the courts.

(D) FOR THE FOREMAN OF THE PACKING GANG.

Whether he is putting up his own fruit or that of another person, the man who does the packing is required, by section 4 of the Order in Council printed on page 10 to pack the fruit in accordance with the law. He should read the whole Act carefully, but should give section 321 special attention. If he violates these requirements, he is liable to the fine specified in section 5 of the Order in Council.

(E) FOR THE APPLE OPERATOR.

The apple operator for his own protection should see that his workmen are familiar with the Inspection and Sale Act, Part IX.

Section 4 of the Order in Council, page 10, is a special protection for the apple operator against carelessness or fraudulent work upon the part of his packers.

Where the apple operator buys apples already packed, he should note particularly that the fruit is marked as required by section 320.

To avoid possible complications in case of fraudulent packing, all contracts should stipulate clearly whether the apples are purchased packed in barrels or whether they are purchased to be packed by the buyer.

Apples should not be bought or sold with the stipulation, 'subject to government inspection.' There is no such thing as 'government inspection,' meaning a 'certificate' or 'report' guaranteeing the quality of a particular lot of fruit.

ADDENDUM.

THE HOUSE OF COMMONS OF CANADA.

BILL 199.

AS PASSED BY THE HOUSE OF COMMONS,
4TH JUNE, 1913.

An Act to amend the Inspection and Sale Act.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Paragraph (a) of subsection 1 of section 320 of *The Inspection and Sale Act*, Chapter 85 of the Revised Statutes, 1906, is amended by inserting at the beginning of the said paragraphs the words “with the words ‘Packed by’ and”. R.S. c. 85.
s. 320
amended
Fruit-marks.
Packer's
name.

2. The said Act is amended by inserting the following section immediately after section 320:— Section
added..

“**320A.** The Governor in Council, by regulation, may—

“(a) prescribe the kinds of imported fruit the packages containing which must be branded or marked; Regulations
as to
marking.

“(b) prescribe the brands or marks to be used thereon;

“(c) prescribe the manner and places in and at which such fruit is to be inspected and such packages branded or marked.

“**2.** All regulations made under the provisions of this section shall be published in *The Canada Gazette*. Publication.

“**3.** All packages of fruit not branded or marked in accordance with such regulations shall be forfeited to His Majesty, and may be destroyed or otherwise disposed of as the Minister may direct. Forfeiture.

“**4.** Any person violating any regulation made under the provisions of this section shall be liable, on summary conviction, to a fine of not more than fifty dollars and costs, or, in default of payment, to imprisonment for a term not exceeding one month.” Penalty.

3. Section 333 of the said Act is amended by striking out the words “*prima facie*,” in the third line thereof. Sec. 333
amended.

4. The said Act is amended by inserting the following section immediately after section 333B:— Section
added.

“**333c.** The person whose name is marked on any closed package of fruit as the packer thereof shall be deemed to be the packer thereof.” Packer
defined.

5. Section 334 of the said Act is amended by adding, at the end thereof, the words “or at the residence or usual place of residence of the accused.” S. 334
amended.
Procedure.

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